

The Shade Tree Ordinance

(Monday, 06 September 2004) - - Last Updated (Monday, 06 September 2004)

January 10,1988 ORDINANCE NO. 1058

AN ORDINANCE TO AMEND CHAPTER 63 OF THE CODE OF THE BOROUGH OF LEONIA ENTITLED "SHADE TREE COMMISSION."AN ORDINANCE PROVIDING FOR THE CREATION OF A SHADE TREE COMMISSION OF THE BOROUGH OF LEONIA, AND THE APPOINTMENT OF COMMISSIONERS, FOR THE PURPOSE OF THE REGULATION, PLANTING, CARE AND CONTROL OF SHADE AND ORNAMENTAL TREES AND SHRUBBERY IN THE STREETS, HIGHWAYS, AND PUBLIC PLACES OF THE BOROUGH OF LEONIA AND PROVIDING FOR THE ENFORCEMENT THEREOF, WHICH IS TO BE LIBERALLY INTERPRETED AND BROADLY CONSTRUED TO ENSURE THAT THE PURPOSES PROVIDED FOR HEREIN ARE MET. PURSUANT TO THE AUTHORITY (TITLE 40: CHAPTER 64, SECTIONS 1-14, AS AMENDED PUBLIC LAWS OF NEW JERSEY 1958 - CHAPTER 42) VESTED IN THE MUNICIPALITIES OF NEW JERSEY:THE COUNCIL OF THE BOROUGH OF LEONIA, COUNTY OF BERGEN, STATE OF NEW JERSEY, ORDAINS:Section 1. Chapter 63 and Chapter 175 Article VII of the Code of the Borough of Leonia, be and are hereby amended by substituting therefore the following new Sections to be known as Chapter 63 as follows: CHAPTER 63

SHADE TREE COMMISSION

Sec. 63-1. Commission; Personne1; Appointment.Sec. 63-2. Term of Office; Compensation.Sec. 63-3. Meetings.Sec. 63-4. Expenses to be Authorized.Sec. 63-5. Powers of Commission.Sec. 63-6. Definitions.Sec. 63-7. Prohibited Acts.Sec. 63-8. Planting of Certain Trees Restricted. Sec. 63-9. Tree Topping.Sec. 63-10. Pruning; Corner Clearance.Sec. 63-11.. Required Permits; Utility Operations.Sec. 63-12. Public Improvements Affecting Trees; Consent of Commission.Sec. 63-13. Tree MaintenanceSec. 63-14. Tree Care.Sec. 63-15. Landmark Trees.Sec. 63-16. Tree Removal on Private Property.Sec. 63-17. Charging the Cost of Trimming / Removal to Owner(s)Sec. 63-18. Removal of Stumps.Sec. 63-19. Tree Replacement.Sec. 63-20. Interference with the Commission.Sec.63-21. No Liability for Death or Injury.Sec. 63-22. Enforcement.Sec. 63-23. Issuance of Permits. Sec. 63-24. Appeal to Commission and Borough Council.Sec.63-25. Penalty.Sec. 63-26. Court Jurisdiction.Sec.63-27. Collection and Disposition of Charges, Costs, Expenses and Penalties.Sec. 63-28 Public Notice.Sec. 63-29 e. SeveranceSec.63-30. Effective Date.

SHADE TREE COMMISSION

Sec. 63-1. (Ref. R.S. 40:64.1) - Commission; Personnel; Appointment.The regulation, planting and care and control of shade and ornamental trees and shrubbery upon and in (1) the streets, highways, public places and (2) parks and parkways of the Borough of Leonia shall be exercised by and under the authority of the Leonia Shade Tree Commission, which is hereby created. The Commission shall be appointed by the Mayor. The membership of the Shade Tree Commission shall consist of:A. Seven (7) residents of the Borough of Leonia, one (1) of whom shall also be a member of the Environmental Commission of the Borough of Leonia. Each of these members shall have the right to vote on matters properly before the Shade Tree Commission; andB. One (1) member of the Borough Council who shall serve as a non-voting liaison between the Shade Tree Commission and the Mayor and Council and the citizens of Leonia.

Sec. 63-2. (Ref. R.S. 40:64.2) - Term of Office; Compensation. The term of office of the Commissioners appointed hereunder shall be five (5) years commencing on January 1 and ending on the fifth December 31, thereafter. Any vacancy occurring during the term of any member, however caused, shall be filled in the manner provided herein on the appointment of members for the unexpired term of the vacant office. Commissioners shall serve without compensation.

Sec. 63-3. Meetings.The Shade Tree Commission shall meet monthly no less than ten (10) times per year, at such time(s) as may be determined by the Commission. The presence of a majority of the voting members of the Commission shall constitute a quorum. The Commission shall act only upon the majority vote of a quorum of members present at a duly convened meeting. Each member, voting or non-voting, must receive notice of any meeting at least three (3) days prior to such meeting.Sec. 63-4. Expenses to be Authorized. (Amended 5-7-64 by Ord. No. 984) No expenses shall be incurred by the said Shade Tree Commission without the previous authorization of the Mayor and Council. Sec. 63-5. (Ref. R.S. 40:64-5) - Powers of Commission.The Shade Tree Commission organized under this ordinance shall have power to: A. Exercise control over the regulation, planting and care of shade and ornamental trees and shrubbery now located, or which may hereafter be planted in any (1) public highway and (2) park or parkway, including the planting, trimming, spraying, care and protection thereof; B. Regulate and control the use of the ground surrounding the same, so far as may be necessary for their proper growth, care and protection;C. Move or require the removal of any tree or shrub or part thereof, dangerous to public safety; D. Make, alter, amend and repeal, in the manner prescribed for the passage, alteration, amendment and repeal of ordinances by the governing body of this Borough, any and all ordinances necessary or proper for carrying out the provisions hereof; E. Administer treatment to, or remove, any tree or shrub situated upon private property which is believed to harbor a disease or insects readily communicable to neighboring healthy trees or shrubs in the care of this Borough and upon private property for the purpose, with the consent of the owner thereof;F Administer the Leonia Tree Trust Funds (See Resolution No. 219-86, dated August 4, 1986);G.

Designate "Landmark Trees." Sec. 63-6. Definitions. A. COMMISSION shall mean The Shade Tree Commission of the Borough of Leonia. B. DESIGNEE shall mean the person or persons employed by the Borough and designated by the Borough Council to issue permits and enforce the provisions of this ordinance. C. TREE shall mean trees and shrubs. D. PERSON shall mean every person, firm, association, partnership, corporation, individual, agency, or other entity. E. STREET shall mean: 1. Land owned by the Borough of Leonia, its Recreation Commission or any other Borough of Leonia municipal body. 2. Any public street within the jurisdiction of the Borough of Leonia. 3. Parks, parkways, county roads, state highways within the Borough of Leonia, subject to assent of the appropriate agency. 4. Rights-of-way of the Borough of Leonia.

Sec. G3-7. Prohibited Acts. No person shall do any of the following acts to any tree on a street without the prior permit of the Commission: A. Break, damage, remove, alter, kill, destroy, mutilate, injure, climb with spikes or by the use of spurs or other instruments which perforate or injure the bark; B. Cut, disturb or interfere in any way with any root; C. Spray with any chemical deleterious to tree health; D. Fasten any rope, wire, sign or other device; E. Remove or damage any guard or device placed to protect any tree; F. Conduct razing, removal or renovation of any structure if deemed by the Commission to be damaging to neighboring street trees; G. Place or distribute chemicals, including, but not limited to, salt deleterious to tree health; H. Cut, prune, except as provided for hereinafter in this ordinance; I. Remove soil either for trenching or otherwise; J. Construct new sidewalks and/or driveways with any material whatsoever within 5 feet of a tree; K. Close or obstruct any open space provided about the base of a tree to permit access of air, water, and fertilizer to the roots of same.

Sec. 63-8. Planting of Certain Trees Restricted. No person shall plant or permit to be planted any poplar or willow tree in any street in which sewer or water mains have been or hereafter may be constructed or within forty (40) feet of any such sewer or water main. Sec. 63-9. Tree Topping. It shall be unlawful for any person to top any street tree. Topping is defined as the severe cutting back of limbs to stubs larger than 3 inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempt from this ordinance at the determination of the Commission.

Sec. 63-10. Pruning; Corner Clearance. Every owner of any tree overhanging any street or right-of-way within the Borough shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of 8 feet (2.43m.) above the surface of the street or sidewalk. Said owners shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs that constitute a menace to the safety of the public. The Borough shall have the right to prune any tree on private property when it interferes with the proper spread of light along the street from a street light, or interferes with the visibility of any traffic control device or sign. Sec. 63-11. Required Permits; Utility Operations. A. The Commission may grant to public utility companies a blanket permit for: 1. tree pruning for line clearance; 2. for the installation and the maintenance of subsurface and above ground construction. B. Public utility companies may, during periods of emergency, without specific prior permit: 1. install temporary attachments to trees and 2. make emergency sub-surface repairs. C. Each public utility company shall exercise reasonable diligence in the maintenance of its construction so as to avoid damage to trees under the jurisdiction of the Commission. Sec. 63-12. (Ref. R.S. 40.54-10) - Public Improvements Affecting Trees; Consent of Commission. No statute giving any person or State, county, borough or municipal board, body or official, power or authority to lay any sidewalks along, or to open, construct, curb or pave any street, or to do any similar act, shall be construed to permit or authorize any interference with or injury to any tree on a street without the consent of the Commission. The provisions of this ordinance are not to be construed as requiring the Borough to maintain, replace or move any sidewalk. Sec. 63-13. Tree Maintenance. Property owners of trees extending over the Borough right-of-way are required to maintain, trim, or remove same to the extent necessary to preserve same in a healthy condition or to prevent same from endangering the public welfare, interfering with public travel or traffic on sidewalks, streets, highways or the right-of-way or interfering with the lighting of sidewalks, streets, highways or the right-of-way. A. Whenever it shall become the duty of any such owner of such tree to trim or remove such tree under the requirements of this ordinance and the work as directed by the Commission or its Designee shall not have been done at the expiration of 30 days personal notice to such owner or 35 days after mailing of a notice, postage prepaid, to the post office address of such owner, or satisfactory explanation shall not have been presented for such failure, then the Commission or its Designee may authorize such work to be performed under the direction of the Commission and paid for out of the monies of the Borough to the credit of the Commission. The cost of said work shall be certified by the Commission or its Designee to the person having charge of the collection of assessments in the Borough. Upon filing the said certificate, the amount of the cost of such work shall be paid to the Borough by the property owner. B. If the Commission or its Designee shall require the removal or remove any such tree as is referred to in this ordinance, the Borough, with the consent of the owner, may provide and install a replacement tree of such size and type as the Commission shall direct without cost to said owner. Sec. 63-14. Tree Care. The Commission shall have the right to plant, prune, maintain, and remove trees and plants within the right-of-way lines of all streets, alleys, avenues, lanes, squares, and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The Commission may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect, or other pest. This ordinance does not prohibit the planting of street trees by adjacent property owners. A list of suitable tree species, for this purpose, is available upon request from

the Commission. Sec. 63-15. Landmark Trees. A. The Commission upon request shall determine whether any tree is qualified as a "Landmark Tree." A tree may qualify as a Landmark Tree if it meets one or more of the following criteria: 1. The tree species is rare; 2. The tree is more than one hundred (100) years of age; 3. The tree is of a mature height or has an unusual trunk diameter or dripline diameter for a tree of its species; 4. The quality of the tree foliage is exceptional for a tree of its species; 5. The location, shade value, fragrance, erosion control, aesthetic features, or scenic enhancement of such tree is of special importance to the Borough. B. All trees designated as Landmark Trees by the Commission shall be shown on an official Borough Map with appropriate code marks signifying each tree's designation, number, species, age, size and other distinguishing characteristics for ready reference and periodic monitoring. C. If the owner or owners of the property on which a Landmark Tree is located consents thereto, the Borough may identify such tree as a Landmark Tree by the placement of a suitable marker thereon. D. If the property on which a Landmark Tree is located changes ownership, the Borough shall notify in writing the new owner of the property that a Landmark Tree exists on said property and shall inform said owner of the ordinance for the protection and preservation of such designated trees. E. A Landmark Tree shall have all the protection of a street tree as described in Sections 7, 9, 10, 13, 14, and 25 of this ordinance. F. If, and when, any Landmark Tree is removed, the Commission shall arrange for the necessary changes to be made to the official Landmark Tree inventory records and Borough Map.

Sec. 63-16. Tree Removal on Private Property. The borough shall have the right to cause the removal of any tree dead or diseased on private property within the Borough when such trees are unlawful or constitute a hazard to life or property, or harbor insects or diseases that constitute a potential threat to other trees or property within the Borough. The Commission will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within 30 days after the date of service of notice. In the event of failure of owners to comply with such provision, the Borough shall have the authority to remove such tree(s) and charge the cost of removal to the property owner. Sec. 63-17. Charging the Cost of Trimming/Removal to Owner(s). When the Borough exercises its authority to charge the cost of tree trimming and/or removal under Subsection 13A and/or 16 hereof, if hiring an independent contractor, the Borough will obtain three estimates and choose that contractor who will perform the work in the most timely and efficient manner as determined by the Borough. If the trimming and/or removal is done by the Leonia Department of Public Works, it shall be charged at current rates determined by the Borough. Sec. 63-18. Removal of Stumps. All stumps of street trees shall be removed below the surface of the ground so that the tip of the stump shall not project above the surface of the ground. Sec. 63-19. Tree Replacement. If it is determined by the Commission that an insufficient number of trees is to remain on a building site or within the lines of the Borough as a result of the removal of existing trees or of the nonexistence of sufficient trees on the premises, the planting of trees of an approved variety to be determined by the Commission shall be submitted to the Planning Board for inclusion as part of the final site plan. Sec. 63-20. Interference with the Commission. It shall be unlawful for any person to prevent, delay, or interfere with the Commission or any member thereof or any of its agents, while engaging in and about the inspection, planting, cultivating, mulching, pruning, spraying or removing of any street trees, or trees on private grounds, as authorized in this ordinance. Sec. 63-21. No Liability for Death or Injury. Neither this ordinance nor anything contained in this ordinance shall be construed to make the Commission or any member(s) thereof responsible for the death or injury of any person, or for an injury to any property or tree. (Note: P.L. 1958, C. 41, S. 7.) Sec. 63-22. Enforcement. A. The requirements of this ordinance shall be enforced by the Commission or any member thereof, or its Designee, who shall seek such penalties as are provided in this ordinance or permitted by law. B. The Commission or any member thereof, or its Designee, may order to be stopped forthwith any tree work or other activity which it or he/she believes is carried on in violation of any provision of this ordinance. The order shall be issued in writing and a copy served upon any person engaged in such tree work or such other activity. If no such person is present upon the property, then the order shall be served upon the owner of the property in question. Thereafter any further work shall comply with the terms and conditions of any permit issued by the Commission or its Designee with respect to such property and the provisions of this ordinance.

Sec. 63-23. Issuance of Permits. Requests for permits required by the provisions of this ordinance for the performance of work should be directed to the Chairman, Shade Tree Commission, c/o Borough of Leonia, Borough Hall, 312 Broad Avenue, Leonia, New Jersey 07605. Sec. 63-24. Appeal to Commission and Borough Council. Any person aggrieved by an action, decision or directive of the Commission, shall have the right within fourteen (14) days to appeal such action, decision or directive by submitting a written request to the full Commission. Any person aggrieved by the Commission's action, decision or directive on such appeal shall then have the right within twenty-one (21) days to appeal to the Borough Council. The appeal must be in writing and a copy sent to the Commission as well. The Borough Council shall by resolution, within thirty (30) days of the submission date of the appeal, modify, affirm, or deny the Commission's decision with such conditions as may be appropriate. If the Borough Council fails to act within the thirty (30) day period, then the decision of the Commission shall stand. Pending completion of this appeal process, enforcement of the Commission's action, decision or directive shall be stayed. Sec. 63-25. Penalty. Any person found guilty of violating any provision of this ordinance shall be, upon conviction or a plea of guilty, fined a sum not exceeding Two Hundred (\$200) Dollars for each offense. A violation affecting more than one tree shall be considered a separate violation as to each tree. Each day any violation of the ordinance shall continue shall constitute a separate offense as well. Sec. 63-26. Court Jurisdiction. A. The Municipal Court of the Borough of Leonia shall have jurisdiction over actions for the violation of this ordinance and the Commission's ordinances shall be enforced by like proceedings and process as that provided by law for the enforcement of ordinances of this Borough. The officers authorized by law to serve and execute process for the Municipal Court of the Borough shall be the officers to serve and execute any process issued out of the Municipal Court for violations of the ordinances of the Commission. B. A copy of any ordinance of the Commission, certified to under the

hand of its secretary or chairman, shall be received in any court of this State as full and legal proof of the existence of the ordinance, and that all requirements of law in relation to the ordaining, publishing and making of the same, so as to make it legal and binding, have been complied with, unless the contrary be shown.

Sec. 63-27. (Ref. R.S. 40:64-13) - Collection and Disposition of Charges, Costs, Expenses and Penalties. All monies to be collected, either as charges, costs, expenses, fines, or penalties under the Ordinance by the Borough may be collected in any manner provided by law. All monies so collected, either as fine or penalties, for any violation of an ordinance, rule or regulation of the Commission, or as a charge against real estate or a property owner, under any provision of this ordinance shall be forthwith paid over to the custodian of the municipal funds. Sec. 63-28. Public Notice. All ordinances, rules or regulations adopted by the Commission shall be filed with the Borough Clerk for inspection by the public during regular business hours. Sec. 63-29. Severance. If any section, subsection, paragraph, sentence, clause, phrase or word contained in this ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect, and to this end the provisions of this ordinance are hereby declared to be severable. Sec. 63-30. Effective Date. This ordinance shall take effect immediately upon final passage and publication according to law.